

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHNNY JAMES,

PLAINTIFF,

v.

DONALD VAUGHN,

DEFENDANT.

CIVIL ACTION

No. 07-392

MEMORANDUM AND ORDER

Before the court is petitioner's "Motion for Leave to File an Appeal." Docket # 4. On January 30, 2007, petitioner Johnny James filed for writ of habeas corpus under 28 U.S.C. § 2254. *See* Docket # 1. This was Mr. James's second habeas application, as he had filed one previous petition in this court attacking the same conviction. *See* Civil Action Number 88-6494. The court found that it lacked subject matter jurisdiction over this second petition as Mr. James had not "move[d] in the appropriate court of appeals for an order authorizing the district court to consider the application," 28 U.S.C. § 2244(b)(3)(A), and dismissed the petition without prejudice to resubmission if such an order was obtained. *See* Docket # 2. Mr. James then filed this motion asking for "leave to file an appeal."

The court liberally construes the *pro se* petitioner's submission as a motion "for an order authorizing the district court to consider the application," mistakenly brought before the district court rather than "the appropriate court of appeals." 28 U.S.C. § 2244(b)(3)(A). Noting Mr.

James's good-faith effort to cure the procedural defects of his application, the court finds that it is "in the interest of justice" to transfer the motion to the Third Circuit Court of Appeals. 28 U.S.C. § 1631. There, the motion will "proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred." *Id.*; see *Robinson v. Johnson*, 313 F.3d 128, 139 (3d Cir. 2002) ("[W]hen a second or successive habeas petition is erroneously filed in a district court with the permission of a court of appeals, the district court's only option is to dismiss the petition or transfer it to the court of appeals pursuant to 28 U.S.C. § 1631.").

Accordingly, this 4th day of October, 2007, it is ORDERED that petitioner Johnny James's "Motion for Leave to File an Appeal" (Docket # 4) and petition filed pursuant to 28 U.S.C. § 2254 (Docket # 1) be TRANSFERRED TO THE COURT OF APPEALS FOR THE THIRD CIRCUIT.

BY THE COURT:

/s/ Louis H. Pollak
Pollak, J.